



POLICE DEPARTMENT CITY OF NEW YORK

November 28, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Daniel Pelan
Tax Registry No. 952099
113 Precinct
Disciplinary Case No. 2015-14923

Detective Thomas Reo
Tax Registry No. 946153
113 Precinct
Disciplinary Case No. 2015-14924

Charges and Specifications:

Disciplinary Case No. 2015-14923

1. Said Police Officer Daniel Pelan, on or about July 1, 2015, at approximately 1515, while assigned to 113 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he searched [REDACTED] without sufficient legal authority.
P.G. 212-11, Page 1, Paragraph 3 – ABUSE OF AUTHORITY- SEARCH
2. Said Police Officer Daniel Pelan, on or about July 1, 2015, at approximately 1515, while assigned to 113 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he stopped Person A without sufficient legal authority.
P.G. 212-11, Page 1, Paragraph 1 – ABUSE OF AUTHORITY- STOP
3. Said Police Officer Daniel Pelan, on or about July 1, 2015 at approximately 1515, while assigned to 113 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he refused to provide his name and shield number to Person A without sufficient legal authority.
P.G. 203-09, Page 1, Paragraph 1 – DISCOURTESY- NAME AND SHIELD
4. Said Police Officer Daniel Pelan, on or about July 1, 2015, at approximately 1515, while assigned to 113 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he refused to provide his name and shield number to Person B without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 1 - DISCOURTESY- NAME AND SHIELD

Disciplinary Case No. 2015-14924

1. Said Detective Thomas Reo, on or about July 1, 2015, at approximately 1515 hours, while assigned to 113 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he stopped Person A without sufficient legal authority.
P.G. 212-11, Page 1, Paragraph 1 – ABUSE OF AUTHORITY - STOP
2. Said Detective Thomas Reo, on or about July 1, 2015, at approximately 1515 hours, while assigned to 113 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he entered [REDACTED] without sufficient legal authority.
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT
3. Said Detective Thomas Reo, on or about July 1, 2015, at approximately 1515 hours, while assigned to 113 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he damaged Arnaldo Lopez's property without sufficient legal authority.
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT
4. Said Detective Thomas Reo, on or about July 1, 2015, at approximately 1515 hours, while assigned to 113 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED], abused his authority as a member of the New York City Police Department, in that he searched [REDACTED] without sufficient legal authority.
P.G. 212-11, Page 1, Paragraph 3 - ABUSE OF AUTHORITY – SEARCH
5. Said Detective Thomas Reo, on or about July 1, 2015, at approximately 1515 hours, while assigned to 113 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he refused to provide his name and shield number to Person B.
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT
6. Said Detective Thomas Reo, on or about July 1, 2015, at approximately 1515 hours, while assigned to 113 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED] was discourteous to Person B in that he stated, in sum and substance, SHUT UP! SHUT THE FUCK UP! SHUT THE FUCK UP! I'M GOING TO TAKE YOU TO JAIL IF YOU DON'T SHUT UP!
P.G. 203-09, Page 1, Paragraph 2 – DISCOURTESY
7. Said Detective Thomas Reo, on or about July 1, 2015, at approximately 1515 hours, while assigned to 113 Precinct and on duty, in the vicinity of [REDACTED]

█████ abused his authority as a member of the New York City Police Department, in that he threatened to arrest Person B without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT

8. Said Detective Thomas Reo, on or about July 1, 2015, at approximately 1515 hours, while assigned to 113 Precinct and on duty, in the vicinity of ██████
█████ wrongfully used force against Person A, in that he slapped her hand without police necessity.

P.G. 203-11 - USE OF FORCE

9. Said Detective Thomas Reo, on or about July 1, 2015, at approximately 1515 hours, while assigned to 113 Precinct and on duty, in the vicinity of ██████
█████ abused his authority as a member of the New York City Police Department, in that he refused to provide his name and shield number to Person A without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT

Appearances:

For CCRB-APU: Heather Cook, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For the Respondents: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street-Suite 640
New York, NY 10038

Adam Etman, Esq.
Karasyk & Moschella, LLP
233 Broadway-Suite 2340
New York, NY 10279

Hearing Date:
October 19, 2016

Decision:

Respondent Pelan:
Specification 1 (Search): Not Guilty
Specification 2 (Stop): Guilty
Specifications 3-4 (Name/Shield): Not Guilty

Respondent Reo:
Specification 1 (Stop): Guilty

Specification 2 (Entry): Guilty
Specification 3 (Damage): Guilty
Specification 4 (Search): Not Guilty
Specification 5 (Name/Shield): Not Guilty
Specification 6 (Discourtesy): Not Guilty
Specification 7 (Arrest Threat): Not Guilty
Specification 8 (Force): Not Guilty
Specification 9 (Name/Shield): Not Guilty

Trial Commissioner:
ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on October 19, 2016. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. CCRB called Damascus Lopez and Arnaldo Lopez as witnesses, and introduced the hearsay statements of Person A and Person B. CCRB also introduced video footage recorded from a neighbor's security camera showing a portion of what occurred in front of the location. Respondents testified on their own behalf and introduced the hearsay statement of retired Police Officer Person C. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Pelan guilty of Specification 2, but not guilty of Specifications 1, 3-4, and Respondent Reo guilty of Specifications 1-3, but not guilty of Specifications 4-9.

FINDINGS AND ANALYSIS

At about 1515 hours on the afternoon of July 1, 2015, Respondents and Police Officer Person C, who worked together in the Anti-Crime unit of the 113th Precinct, were patrolling in an unmarked car [REDACTED] Respondent Reo was

the driver of the vehicle, a black Impala, while Respondent Pelan was the front seat passenger, and Officer Person C, who has since retired, sat in the rear. In front [REDACTED], the officers observed what they believed to be suspicious behavior by two people, Person A and Damascus Lopez ("Damascus"), who the officers later learned resided in the house at that location. After driving several times back and forth on the block, Respondents and Officer Person C, who were in plain clothes, stopped in front of the house. They exited their vehicle, and observed Person A run inside her home. The officers, believing that Person A possessed a firearm, pursued her inside. Ultimately, they did not charge her with any crime, but did arrest Damascus, who already was inside the house, for marijuana possession.

At issue is whether Respondents had sufficient legal authority to pursue and stop Person A inside her home, and whether Respondents committed additional misconduct once they entered that home. Below is a summary of the relevant evidence presented at trial.

Damascus Lopez testified that he was in the basement of the house speaking with [REDACTED] Person B, when he heard banging on the floor above. He went upstairs to the first floor to investigate, and saw three plain clothes officers standing over Person A, [REDACTED]. One of the officers, Respondent Reo, had his gun pointed at Person A, who had her hands up and was crying. When Damascus asked why the officers were inside the house, Respondent Reo ordered Damascus to the floor and handcuffed him. (Tr. 18, 20, 23)

According to Damascus, Respondent Reo asked where in the house were the guns and drugs, and then he searched the premises, first going down to the basement. Damascus acknowledged that he didn't actually see Respondent Reo conduct this search; he merely saw Respondent Reo walk toward the back and assumed he then went down to the basement since there was nowhere else to go. (Tr. 23-24) The [REDACTED] Person A and Damascus could be heard

crying upstairs on the second floor, so Person A was allowed to go up there with two officers to console her. The officers returned to the first floor, and while Respondent Pelan remained there with Person B, the other two officers brought Damascus up to the second floor and told him to give them the contents of his drawer or they would have [REDACTED] taken away. Damascus testified that the drawer was already opened, and he handed the officers a softball-sized quantity of marijuana that he kept for his own use. Later in court, Damascus pled guilty to marijuana possession and apparently did five days of community service. (Tr. 25-27, 32, 42)

Damascus testified that he was not outside with Person A before the police arrived, and he did not run inside the house. He admitted he did have a disagreement with Person A earlier, but it did not occur outside. He did not recall trying to wrest a tablet away from Person A; indeed, Damascus claimed that Person A did not even own a tablet. (Tr. 33-36)

When asked to describe the house, Damascus acknowledged there were weeds in front, and that there was a window screen with a hole in it. Damascus explained that they were doing renovation inside the house, and so it may have appeared cluttered with boxes and bags inside. After the police left, Damascus noticed that the wood holding the locks on the front door was splintered. (Tr. 28, 37, 39-41, 47)

Damascus testified that as the officers were taking him out of the house in handcuffs, he asked Person A to take his phone and keys. Before she could do so, she was shoved away by one of the officers. (Tr. 28) Damascus claimed that he heard either Person A or Person B ask the officers for their names and badge numbers, but that information was not provided. (Tr. 28)

Neither Person A nor Person B appeared to testify, Person B for medical reasons and Person A because she moved out about six months after the incident and could not be found. Person A was interviewed by CCRB on July 17, 2015, and Person B on July 31. Recordings of those interviews,

and the accompanying transcripts, were admitted into evidence (CCRB Ex. 1 and 1A for Person B, Ex. 2 and 2A for Person A). Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235 (1st Dept. 1991); *In the Matter of 125 Bar Corp v. State Liquor Authority of the State of New York*, 24 N.Y.2d 174 (1969). To be sure, it is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the witness. In the absence of such live testimony from these witnesses here, this tribunal listened carefully to the prior recorded statements of Person A and Person B, and reviewed the accompanying transcripts.

Person A stated that before the incident, she and Damascus were arguing about their relationship. She followed him into and out of their house. Outside, Damascus yanked away from Person A a tablet she was holding; when Damascus was distracted, Person A retrieved her tablet. Damascus went back inside while Person A remained in front of the house. She noticed the Impala drive by a couple of times, and without realizing that it was a police car, she gave the occupants the finger. When Person A saw the car do a U-turn, she ran inside the house and locked the door. (CCRB Ex. 2A at 3-4, 8-9, 15-18)

From inside the house, Person A heard someone outside banging on the door and telling her to open it. The door was then kicked in, and officers entered. As Person A backed up, one officer pointed his gun and ordered her to the floor. It is apparent from the various accounts that the officer to whom she was referring was Respondent Reo. Person A had a tablet in her right hand. The officer removed his handcuffs, but then Damascus emerged from the rear and the officer handcuffed him instead. (CCRB Ex. 2A at 4-5, 21, 25-26) Person A was screaming for help,

which seemed to anger the officer with the gun, who told her to stop screaming and crying. That officer then asked her to accompany him up to the second floor to check on her [REDACTED] who was crying. While up there, the officer looked around and opened a bedroom drawer. Damascus was then brought up to the second floor in handcuffs, and he asked the officers if they would stop what they were doing if he gave them his marijuana. Damascus handed police a bag of marijuana that was in his drawer, and they all returned down to the first floor. (CCRB Ex. 2A at 33, 37, 39-40, 42-44)

Person A stated that once they were back on the first floor, Person B asked each of the officers individually for their names and badge numbers, while Person A, from behind Person B echoed those requests generally, "just like throwing it out." According to Person A, none of the officers responded, other than to say that Damascus would be brought to the [REDACTED] precinct. As Damascus was being brought out, Person A moved toward him to get his keys, but the officer with the gun knocked her hand out of the way and her hand hit a cart. Person A claimed that her hand hurt until the next day, but she did not seek medical attention. (CCRB Ex. 2A at 47-48, 51-53)

In her statement to the CCRB, Person B described how Damascus ran down to her in the basement saying that he needed her help because the police had Person A. Damascus went back up to the first floor and Person B, who moves more slowly for medical reasons, followed behind. She observed one of the officers, who she described as the "rough officer", handcuff [REDACTED], while Person A was on the floor screaming hysterically. When considered in conjunction with other witness accounts, it is apparent that the "rough officer" is Respondent Reo. The officer asked Person B if she knew who the other two people were, and she responded that it was [REDACTED] (CCRB Ex. 1A at 3-5, 37)

Person B stated that she repeatedly asked the rough officer for his name and why they were there, and he told her that they would tell her later and to "shut the fuck up." The officer looked through some boxes in the dining area, and then went downstairs; Person B noticed afterward that some items downstairs had been touched, suggesting that there had been a search. (CCRB Ex. 1A at 8-10, 40-41) After the officer came back up, Person B's [REDACTED] walked part of the way down the stairs from the second floor crying, and the rough officer told her to "shut up and go back upstairs." The officer then accompanied Person A upstairs to attend to the crying girl. Person B did not follow them up, but could hear the "rough officer" telling Person A that if she didn't "shut up," he was going to send her to jail and he would call ACS to take away her

[REDACTED] According to Person B, the other two officers then went up to the second floor to try to coax the "rough officer" to return downstairs. Person B could hear the "rough officer" repeatedly say, "I know I'm going to find something." Before they came down, Damascus went upstairs unescorted; he later told Person B that he gave the officers some marijuana that he kept in his clothing in his bedroom so that they would leave. When the officers came back down, Person B again asked the "rough officer" what they were doing inside the house, and he told her that if she didn't "shut the fuck up" he would take her to jail. (CCRB Ex. 1A at 11-17, 43-44, 46)

As the officers were taking Damascus out in handcuffs, Person A reached to try to get his keys from his pocket, but the "rough officer" slapped her arm really hard and said, "Don't you fucking dare, or I'll take you too." Person B again asked all of the officers for their names and shield numbers, and was told she would get the information later. She estimated that during the incident, she asked the "rough officer" for his information "maybe like ten times" to no avail. She also stated that the same officer told her to "shut the fuck up" multiple times in response to her questions. (CCRB Ex. 1A at 20-21, 49-51)

Arnaldo Lopez ("Arnaldo"), [REDACTED] testified that he was the owner of the house. He was at work during the incident, but was called home after the police left. Arnaldo confirmed the damage to the front door, testifying that the door jamb was split in half, and the door was off one of its hinges. According to Arnaldo, his wife came home later and repaired the door to some extent. In his CCRB interview on July 17, 2015, Arnaldo had described the door, itself, as having "just scratches -- minor damage." Arnaldo acknowledged that he and Person B are plaintiffs in a federal civil action against the Department regarding this incident, his first such lawsuit. He was unsure as to the exact amount of money being sought in the lawsuit, leaving that to the lawyers. (Tr. 52-54, 56, 61-63)

According to Arnaldo, his neighbor across the street had a surveillance camera that recorded a portion of this incident, showing the front of Arnaldo's house. The neighbor provided footage to Arnaldo's wife, and that footage, unaltered, was passed on to CCRB. (Tr. 66) The video, which was admitted into evidence (CCRB Ex. 3), appears to show Person A emerge from the house at 15:30:42 and walk to the sidewalk. Respondents' black Impala drives by without stopping about half a minute later. Person A starts pacing back and forth, then walks back up the steps and sits down, as the Impala returns at 15:32:26. When the car stops in front of the house, Person A stands up, runs inside, and closes the door with the officers pursuing. Respondent Reo appears to push on the door and then kick it several times before the door opens inward. All three officers then slowly enter the house. About 15 minutes later, the officers re-emerge with a handcuffed Damascus, and drive away.

Respondent Reo testified that when they first drove by [REDACTED] he observed two people in front of the house, neither of whom he had ever seen before. He locked eyes with Damascus, who was wearing a backpack, and Damascus turned and sprinted inside the house.

The other individual, Person A, remained outside. The detective noted that the house appeared not to be maintained and looked abandoned. (Tr. 82, 85, 108)

With their suspicions aroused, Respondents looped back to have another look. Respondent Reo testified that this time he observed only Person A outside, looking around as if she were a lookout. Respondents decided to drive by again in order to interview Person A. When they pulled up, Person A was sitting on the stoop. As Respondent Reo was exiting the car and identifying himself as a police officer, he observed Person A stand up and grab her waist, as if to prevent an object from falling. He did not see a bulge, but still suspected that Person A possessed a firearm. Person A sprinted inside, and slammed the front door. Respondent Reo pursued Person A and pushed against the door, feeling some push-back from the other side. The detective then kicked the door open and entered the house, since he believed Person A had a firearm. (Tr. 85-88, 113-116)

Upon entering, Respondent Reo observed Person A with her hands in the air, screaming that the cops were there. Person A's waist area also was visible, and the detective could see she did not have a weapon. Respondent Reo then saw Damascus coming from the rear of the house. Damascus was handcuffed by one of the officers for the safety of the investigation. The detective walked back to the kitchen to speak with Person B, who identified Damascus and Person A [REDACTED] who lived there. Respondent Reo testified that he identified himself to Person B, who was calm and cooperative, and explained why they were there. (Tr. 88-89, 91, 119, 122, 125)

According to Respondent Reo, he then accompanied Person A up to the second floor to tend to her [REDACTED]. When the detective came back downstairs, he became aware that Damascus was being arrested by Officer Person C for marijuana possession. Person A repeatedly

asked for Damascus' property, but Respondent Reo explained that it would be vouchered at the [REDACTED] precinct. As Officer Person C was escorting Damascus out to the car, Person A "lunged towards Damascus", possibly to grab the property, but Respondent Reo wedged his body between Damascus and Person A to prevent it from happening. Person A, who was screaming throughout the incident, asked for his badge number. Respondent Reo tried to respond, but since Person A was still yelling, he instead turned to Person B and again identified himself to her. (Tr. 93, 95, 97-99, 126-127, 129, 134)

Respondent Reo described the inside of the house as covered with junk everywhere. He insisted he did not search any part of the house, including the basement or any other rooms. Indeed, he denied even going down to the basement. He testified that he never drew his firearm, and denied that he ever mentioned ACS. (Tr. 94, 130, 136)

Respondent Pelan testified that on their first pass of the house, he observed Damascus look at their car then sprint inside. The second time by, Person A was on the sidewalk looking up and down the block like a lookout. As the officers drove back to the house a third time, Person A was now sitting on the steps. She stood up, and Respondent Pelan saw a bulge in the front of her waist; he could not see what was causing the bulge, but it appeared to be a hard object under her shirt, possibly a firearm. Person A ran inside, pursued by the three officers. Respondent Pelan was not sure how they got the door open, but all three entered the house. (Tr. 143-148, 157-159)

Once inside, Respondent Pelan observed Person A on the floor screaming, with a phone or tablet in her hand. The officer no longer saw any bulge, and concluded that the object he had seen outside was the phone or tablet. Damascus emerged from the back, and was handcuffed by one of the officers. At some point, Officer Person C recovered marijuana from Damascus, though Respondent Pelan did not see how or where it was recovered. Respondent Pelan testified that he

remained near the front of the house with Person A, who was "screaming on the top of her lungs the whole entire time." He did not go into any other rooms, did not conduct any search of the premises, and did not see the other officers search either. Respondent Pelan also denied ever being asked to provide his name and shield number to any of the occupants. He did not draw his weapon, and did not believe the other officers did either. (Tr. 148-152, 163-167, 169, 171-172)

Respondents also introduced into evidence the October 21, 2015 statement of Officer Person C, who is now retired. As with the hearsay statements of Person A and Person B, this tribunal listened to the recorded statement of Officer Person C, with the aid of the accompanying transcript (Respondent Ex. A and B). Officer Person C corroborated Respondents' observations regarding what was happening outside the house [REDACTED]. He added that from a distance of about 30 feet, he saw a "little glimmer" from the area where Person A was clamping her left arm tight to her side, and her waistline was bulging. Officer Person C could not see the shape of the object, but believed she possessed a firearm. (Resp. Ex. B at 8-9, 24-26)

The officer followed Respondent Reo inside, and observed Person A screaming irrationally. Her hands were empty and there was no sign of a firearm in her waist. Damascus came from the back, and Officer Person C ordered him to the floor, checked him for weapons, and placed him in handcuffs for safety reasons. The officer asked him why he had run, and Damascus explained that he had "weed" and knew that they were police. When Officer Person C asked him to show him how much weed he had, Damascus walked him upstairs to his dresser drawer and removed "a substantial amount" of marijuana, maybe an ounce or two, for which he was placed under arrest. (Resp. Ex. B at 9-11, 16, 24, 39-41) The officer also prepared a claim report for damage to the front door, though he could not recall the specifics of such damage. (Resp. Ex. B at 69)

Officer Person C stated that he did not hear any of the officers use profanity during the incident, and did not hear anyone mention ACS. He could not recall anyone at the scene asking for their names and shield numbers, and did not hear any of the officers refuse to provide such information. Officer Person C did not see either Respondent do a search of the premises. (Resp. Ex. B at 53-54, 58)

Specification 1 against Respondent Reo charges the detective with stopping Person A without sufficient legal authority, and Specification 2 charges him with entering the house without sufficient legal authority. Similarly, Specification 2 against Officer Pelan charges the officer with stopping Person A without sufficient legal authority. For the reasons set forth below, I find Respondents guilty of each of these specifications.

The starting point for assessing these specifications is an evaluation of the entry into the house. The "stop" in this case was not a simple encounter on a public street; rather, Respondents, without a warrant, kicked open the front door and pursued Person A inside her house. It is a basic principle of Fourth Amendment law that entry into a home without a warrant is presumptively unreasonable. This rule against warrantless entry is subject only to a few specifically established exceptions. One such exception recognized by the courts is where police are in "hot pursuit" of a suspect. The Supreme Court has held that "a suspect may not defeat an arrest which has been set in motion in a public place...by the expedient of escaping to a private place." *United States v. Santana*, 427 U.S. 38 (1976)

Respondent Reo, who kicked open the door and was the first to enter, stated clearly that they entered the house because they believed Person A possessed a firearm. At issue, then, is whether Respondents had probable cause to arrest Person A for possession of a weapon before they pursued her into her home. It is well-settled that an unidentifiable bulge which is readily

susceptible of an innocent as well as guilty explanation is not legally sufficient to justify even a level-three pat-down frisk, let alone probable cause for an arrest. See *People v. Harris*, 122 AD3d 942 (2d Dept. 2014). Here, the officers were not responding to a call about a gun. None of the officers actually saw a firearm, or even an object in the shape of a gun. Specifically, Respondent Reo saw Person A stand up and grab her waist, but he did not see a bulge. Respondent Pelan witnessed a bulge in her waist which he believed to be a hard object under her shirt, but he could not actually see that object or its shape. Officer Person C stated that from 30 feet away, he saw Person A' waistline bulging and a "little glimmer" where she was pressing her arm to her side, but he, too, did not actually see the shape of the object. None of these observations were specific enough to support a finding of probable cause that Person A possessed a firearm.

Respondents also rely on the additional observations they made while driving by [REDACTED] [REDACTED] Respondents and Officer Person C noted that Damascus made eye contact with them before running inside the house. Person A, meanwhile, remained outside on the sidewalk, looking around in a way that the officers found suspicious. Respondents claimed that the house, itself, appeared like it might be abandoned, though the video footage showing the front of the house calls into question the reasonableness of that belief, and Respondents did not initially stop and pursue Damascus inside when they first saw him run into the house. Respondents may well have considered the behavior of Damascus and Person A to be suspicious, but that still did not provide sufficient legal authority for the officers to pursue Person A inside her home. See *People v. Harris*, supra, where a suspect looked in the direction of a police vehicle then walked inside the gate of a house that the officer believed to be abandoned because it was dark and the grass was uncut. The officer pursued the suspect, and saw him make a motion as if shoving something in his front waistband. As he drew nearer, the officer observed a bulge in the suspect's mid-

waist area and there seemed to be a hard object sticking out. The officer conducted a pat-down and recovered a gun, but the Court held that the police conduct was improper; under these circumstances, the officer, at most, had a right to question the suspect.

This tribunal is mindful that conduct that would lead to suppression in a criminal court does not automatically constitute misconduct in this forum. However, the criminal court case law does provide guidance for what is reasonable conduct under the circumstances presented here. Taken as a whole, the observations of Respondents and Officer Person C did not give them probable cause to pursue Person A inside her home. To be sure, what they observed constituted suspicious conduct permitting further inquiry. But there was not enough here to support the more serious intrusion of a warrantless entry into a home. Under the circumstances faced by Respondents, it was not reasonable for them to kick open the front door and enter the home in pursuit of Person A. Accordingly, I find Respondent Reo guilty of Specifications 1 and 2, and I find Respondent Pelan guilty of Specification 2.

Specification 3 against Respondent Reo charges him with damaging the door of Arnaldo Lopez. It is undisputed that Respondent Reo kicked open the front door, and from the video footage it appears he kicked the door multiple times. Each of the civilians stated that there was damage to the door, particularly in the area of the door jamb, which Arnaldo credibly testified was split in half. Counsel for Respondent brought out that Arnaldo's wife was able, to some extent, to repair a portion of this damage. But even so, that does not negate the fact that damage to the door was caused by Respondent's actions. Accordingly, I find Respondent Reo guilty of Specification 3.

The remaining specifications deal with alleged conduct inside the house. The accounts provided by the civilian complainants were very different from those given by the members of

the service, so resolution of these charges turns on a credibility assessment; that assessment favors the Respondents. Both Respondents have outstanding records with the Department. They each were professional, consistent, and detailed in their testimony, and their accounts were essentially corroborated by the hearsay statement of Officer Person C. The accounts of Person A and Damascus, in contrast, were at times inconsistent, such as in their descriptions of what occurred outside prior to the police entry. Similarly, Person B and Damascus provided different statements regarding where Damascus was upon the arrival of the police. Person A was described by just about every witness as screaming hysterically throughout most of the incident. Person B's hearsay account at times sounded exaggerated against the officers, such as in her description of how verbally abusive Respondent Reo was inside the house. In the absence of live testimony from Person A or Person B, there was no opportunity to explore the veracity of their claims through cross-examination. [REDACTED] also acknowledged that they have a pending lawsuit against the Department, seeking an unspecified amount of money for the alleged police misconduct in this case. With this credibility assessment in mind, we turn to the remaining specifications.

Both Respondents are charged with an unlawful search, Respondent Reo in Specification 4, and Respondent Pelan in Specification 1. It is alleged that Respondents searched for, and recovered, marijuana from Damascus' dresser, and that they also performed a more general search of the house looking for weapons or other contraband. The credible evidence has failed to establish that any such search occurred.

Regarding the alleged search and recovery of the marijuana, Damascus claimed that Respondent Reo and Officer Person C initially went up to the second floor with Person A. Later, they brought him up there as well, and his dresser drawer, containing the marijuana, already was open. In her hearsay account, Person A claimed she saw Respondent Reo open the dresser drawer.

However, Damascus' self-serving testimony, where he denied running into the house when he saw the police, adversely affects his credibility. The hearsay statement of Person A, who was screaming hysterically during the entirety of the incident, lacks credibility as well.

Respondents, meanwhile, denied searching for marijuana or having anything to do with its recovery. Both Respondents insisted that they only learned of its recovery afterward from Officer Person C. Respondent Pelan testified that he heard Officer Person C asking Damascus why he had run. Although Respondent Pelan did not hear Damascus' response or the rest of the conversation, Officer Person C confirmed that he did, in fact, discuss with Damascus why he had run. According to Officer Person C, Damascus explained that he ran because he had "weed" with him. When the officer asked Damascus to show him the marijuana, Damascus brought Officer Person C to where the marijuana was stored, inside the dresser drawer. To be sure, Officer Person C's statement regarding the details of how the marijuana was recovered was hearsay. However, that statement, made three-and-one-half months after the incident, in the very least confirms that he, and not the Respondents, was the officer involved in the recovery of the marijuana. On balance, the credible evidence has not established that either Respondent was in any way involved in any such search or recovery.

As for the allegation that Respondents searched around the house for weapons, there, too, the evidence was lacking. Part of this allegation was based on assumptions, from sounds that were heard coming from different rooms in the house and objects that appeared to have been touched. Damascus made a general claim that Respondent Reo "searched the premises," but when pressed he acknowledged that he never witnessed him actually searching in the basement. There were some direct observations, such as Person B's claim that she saw Respondent Reo looking through boxes, and Person A's claim that she saw Respondent Reo open a drawer.

Person A

also made a general claim that the officers were checking throughout the house. But as discussed above, there are credibility issues connected with the hearsay statements of each of these two witnesses, neither of whom appeared to testify, leaving their accounts untested by cross examination.

Both Respondents, meanwhile, denied conducting any such searches, explaining that they quickly secured the location, and then left to transport their prisoner to the precinct. I credit Respondent Pelan's explanation that once he observed the phone or tablet in Person A's hand, and no further sign of a bulge, there no longer was a concern that she possessed a firearm and no need to search the premises. When asked point blank whether they engaged in any kind of search within the house, Respondent Reo answered, "I didn't search," and Pelan testified that there was "no searching at all, no." (Tr. 94, 174) In his hearsay statement, Officer Person C stated that at most the officers just did a quick "visual scan" upon entering the house, but there was no search of the house. (Resp. Ex. B at 42, 55)

Having reviewed the entire record, this tribunal finds that other than vague, general statements, there essentially was no reliable evidence that Respondent Pelan was involved in searching the house. While the allegations suggesting that Respondent Reo searched the house were at times more specific, these allegations were largely untested hearsay accounts and on balance lacked credibility. The record has not established, by a preponderance of the credible evidence, that Respondents searched the house, and I find them not guilty of these specifications.

Both Respondents are accused of not providing their names and shield numbers to Person A and Person B, Respondent Reo in Specifications 5 and 9, and Respondent Pelan in Specifications 3 and 4. In her statement, Person B claimed that she asked all of the officers for their information multiple times, and was repeatedly told to shut up. Person A said that as the

officers were preparing to leave, she heard Person B make these requests, and from behind Person B Person A was yelling at the officers to provide the information as well. Damascus also claimed to have heard the request, though he wasn't sure who actually made it. Officer Person C stated that he could not recall hearing any such requests, and Respondent Pelan testified that nobody ever asked him for his name or shield number. Respondent Reo testified that he identified himself to Person B during their initial conversation. He also acknowledged that at one point Person A asked him to identify himself, but she was still screaming so hysterically that he was unable to converse with her in a meaningful way; instead, he repeated his information to Person B. On balance, having listened to the live testimony and recorded statements, and after weighing the relative credibility of the parties, I am not persuaded by a preponderance of the credible evidence that either Respondent refused to provide his name and shield number to Person A or Person B, and I find them each not guilty of these specifications.

Specification 6 against Respondent Reo charges him with discourtesy, in that he told Person B to "shut the fuck up" and threatened to take her to jail. Similarly, Specification 7 alleges that Respondent Reo threatened to arrest Person B without sufficient legal authority. According to Person B, Respondent Reo told her multiple times to "shut the fuck up", and threatened that he would take her to jail if she didn't shut up. Neither Damascus nor Person A provided any corroboration for these claims. In contrast, Respondent Reo consistently described his conversations with Person B as calm and cooperative, and Officer Person C confirmed that he never heard any profanity being used. Indeed, even Person B and Person A acknowledged that Respondents were mindful of Person B's health conditions, encouraging her to sit. The record has not established, by a preponderance of the credible evidence, that Respondent Reo was

discourteous to Person B or that he threatened to arrest her, and I find him not guilty of these specifications.

Specification 8 against Respondent Reo alleges that he used force against Person A without police necessity. Specifically, Person A and Person B described how Respondent Reo slapped Person A's hand away as she was reaching toward Damascus for his keys, and Damascus described it as a shove. Respondent Reo testified that as a handcuffed Damascus was being led out of the house, he observed Person A reaching toward him. Respondent Reo denied slapping her hand, stating that he merely positioned his body between Person A and Damascus to prevent them from having any contact. Respondent Pelan testified that he was focused on getting the prisoner to the car, and did not observe this contact occur.

Given that each of the three civilian complainants described some level of physical contact between Respondent Reo and Person A, it is more likely than not that some such contact occurred. However, even if Respondent Reo did slap away Person A's hand, that slap did not constitute an improper use of force. At the time of the slap, Respondents and Officer Person C were engaged in trying to escort a handcuffed prisoner out of the house and into a police vehicle. In situations such as these, it is necessary for the officers to maintain control of the situation. When one of the occupants of the house, who had been screaming hysterically for most of the encounter, reached toward the prisoner, Respondent Reo recognized the necessity of preventing any such contact. A slap on the hand was a minimally intrusive way to prevent this interference by Person A, and helped maintain control of the situation. Indeed, the officers were then able to escort Damascus to the car without further incident. The credible evidence has not established that Respondent Reo wrongfully used force against Person A without police necessity, and I find him not guilty of this specification.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent Pelan was appointed to the Department on January 9, 2012 and Respondent Reo was appointed on January 7, 2008. Information from their personnel records that was considered in making these penalty recommendations is contained in attached confidential memoranda.

Respondent Reo has been found guilty of stopping Person A and entering the house without sufficient legal authority, and for damaging the front door. Respondent Pelan has been found guilty of stopping Person A as well. Neither has any formal disciplinary history. Counsel for CCRB asks that each Respondent forfeit twenty (20) vacation days for the multiple specifications. In light of several "not guilty" findings, and taking into account legal precedent, those recommendations are excessive.

In *Disciplinary Case No. 15036/16* (June 1, 2016), a 20-year sergeant with no disciplinary history negotiated with CCRB a penalty of ten (10) vacation days for entering and searching an apartment without sufficient legal authority, damaging a door, speaking discourteously to an individual, refusing to provide his shield number to an individual, and wrongfully using force against an individual. The charges there are similar to those in the present case, except here there have been "not guilty" findings on several of the charges. As such, even the 10-day penalty in that case would be excessive here.

In a recent trial with similar results to this case, *Disciplinary Case No. 's 12259/14 and 12260/14* (May 24, 2016), a five-year officer with no disciplinary history forfeited three (3) vacation days for entering a residence without sufficient legal authority, and a nine-year sergeant with no disciplinary history forfeited five (5) days for the same conduct. In that case, the officer and sergeant pursued a suspect who they believed to possess a marijuana cigar into a backyard.

Since they did not have probable cause to conclude that the cigar actually contained marijuana, the entry lacked sufficient legal authority. There also were additional charges for conduct that allegedly occurred inside the residence, but, like here, those resulted in "not guilty" findings. The decision noted that the sergeant was receiving a slightly higher penalty because he was being held to a higher standard as a supervisor.


Here, Respondents did have legitimate suspicions based on their observations [REDACTED] but those observations did not rise to the level of probable cause. As such, there must be some level of accountability for Respondent Reo's over-zealousness in kicking open the door of the house and for both Respondents pursuing Person A inside her home. With respect to Respondent Pelan, taking into account the totality of circumstances in this case, including his outstanding record with the Department, and in light of the legal precedent, I recommend that Respondent Pelan forfeit three (3) vacation days as an appropriate penalty. Respondent Reo is more experienced than his colleague and took a decidedly more active role in the incident. Again, taking into account the totality of the circumstances, including his outstanding record with the Department and the relevant legal precedent, I recommend that Respondent Reo forfeit six (6) vacation days as an appropriate penalty.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

MAR 28 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DANIEL PELAN
TAX REGISTRY NO. 952099
DISCIPLINARY CASE NO. 2015-14923

Respondent was appointed to the Department on January 9, 2012. In his last three annual performance evaluations, he received 4.5 overall ratings of "Extremely Competent/Highly Competent" in 2014 and 2015 and a 4.0 overall rating of "Highly Competent" in 2013. He has eight medals for Excellent Police Duty and two medals for Meritorious Police Duty. [REDACTED]

Respondent has no prior disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE THOMAS REO
TAX REGISTRY NO. 946153
DISCIPLINARY CASE NO. 2015-14924

Respondent was appointed to the Department on January 7, 2008. He received 4.5 overall ratings of "Extremely Competent/Highly Competent" on his 2013, 2014 and 2015 annual performance evaluations. He has thirty-one medals for Excellent Police Duty and eight medals for Meritorious Police Duty. [REDACTED]

Respondent has no prior disciplinary adjudications. He was placed on Level 1 Force Monitoring on March 3, 2014 after having received three or more CCRB complaints in one year. That monitoring remains ongoing.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials